

Internal Revenue Service

Department of the Treasury

District
Director

Date: JUL 14 1986

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] under the provisions of General Laws Chapter [REDACTED] in [REDACTED].

The purposes for which the corporation was formed are "to provide for maintenance, preservation and architectural control of the resident lots and Common Area within that certain track of property located in [REDACTED] County, [REDACTED] and to promote the health, safety and welfare of the residents and general public."

Your activities consist of maintenance and preservation of the residential area described as [REDACTED] area of [REDACTED]. This area consists of nearly [REDACTED] with approximately [REDACTED] families residing therein.

Maintenance includes snow removal, road repair and maintenance of the paths to local woodlands and alongside old cranberry bogs. Services may be performed by contractors, if necessary and materials required will be purchased by the association.

Article IV of the corporation By-Laws states:

The Common Properties shall be limited to the use of the Members and their guests. In the event a Member shall lease or permit another to occupy his Home or Lot, the lessee or occupant shall, at the option of the Member, be permitted to enjoy the use of the Common Properties in lieu of and subject to the same restrictions and limitations as said Member. Any Member, lessee or occupant entitled to the use of the Association facilities, if any, may extend such privileges to members of his family residing in his household."

The sole source of financial support is from membership dues of area residents and each lot is assessed \$[REDACTED] per year.

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it primarily engages in promoting in some way the common good and general welfare of the people of the community.

The concept of social welfare implies a service or program directed at benefitting the community rather than a private group of individuals.

Revenue Ruling 74-99, 1974-1 C.B. 131 states that a homeowners association must, in addition to otherwise qualifying for exemption under section 501(c)(4) of the Code, satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof;...and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners association.

Your homeowner's association restricts the use of common properties contained within the association to members and their guests contrary to the social welfare purposes outlined in Revenue Ruling 74-99, 1974-1 C.B. 131. Article IV of the Association's By-Laws indicates that the association restricts the use of the common Properties. Unless the restriction is a temporary one for public health or safety, such action by the homeowners' association is an exercise by the members of their property rights. As the Supreme Court stated in *Kaiser Aetna v. United States*, 444 U.S. 164, 176, (1979) "the right to exclude others" is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."

It appears that your organization may elect to file under section 528 to receive certain tax benefits which, in effect, permit the exclusion of exempt function income from gross income. The election to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations. However, if you do not elect to file under section 528, you are required to file Federal income tax returns on Form 1120. Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(4) of the code and propose to deny your request for exemption under that section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

If you do not agree with this determination, you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time, this determination will become final.

Sincerely yours,


TSJ

District Director

cc: 

Enclosure: Publication 892